

PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) TKX-7466 US
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on _____ Signature _____ Typed or printed name _____	Application Number 10/693,423	Filed October 24, 2003
	First Named Inventor Christian Schoenfeld	
	Art Unit 2454	Examiner Viet Duy Vu
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p>I am the</p> <div style="display: flex; justify-content: space-between;"><div style="width: 45%;"><p><input type="checkbox"/> applicant/inventor.</p><p><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</p><p><input checked="" type="checkbox"/> attorney or agent of record. Registration number <u>42,541</u></p><p><input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34. _____</p></div><div style="width: 45%; text-align: right;"><p>_____ /Michael J. Fogarty, III/ Signature</p><p>_____ Michael J. Fogarty, III Typed or printed name</p><p>_____ (972) 732-1001 Telephone number</p><p>_____ January 23, 2009 Date</p></div></div> <p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.</p>		

☒ *Total of 1 forms are submitted.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Christian Schoenfeld	Docket No.:	TKX-7466 US
Serial No.:	10/693,423	Art Unit:	2454
Filed:	October 24, 2003	Examiner:	Viet Duy Vu
For:	Adapting a User Interface on a Display Device of a Protocol Tester		

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Dear Sir:

Pending independent claims 1, 2, 4-10 and 12-21 have been rejected in the Final Office Action mailed October 24, 2008 (“the Final Office Action” or “FOA”). The claims stand rejected under 35 U.S.C. § 103(a) as assertedly being unpatentable over U.S. Patent Publication No. 2003/0225876 to Oliver, *et al.*, (hereinafter “Oliver”). The claims, however, include limitations that are not taught or suggested by the cited reference.

Independent Claim 1

Independent claim 1 recites:

modifying the visual network plan on the display device in comparison to a basic network plan **according to which hardware and/or software exists in the protocol tester.**

The Final Office Action cites Oliver’s modification of colors of the network elements as the claimed “modifying the visual network plan.” FOA at 2. However, modification of the display colors is not a modification of the claimed “visual network plan.” The term “visual network plan” as used in the present application means the position and connections of the network elements. (Claim 1; Specification at page 4, lines 17-18, and page 6, lines 10-12; Figure

1.) Oliver does not teach or suggest modifying the position and connections of the network elements.

Furthermore, even if the term “visual network plan” is read broadly enough to mean just the colors used in the network display, the colors of the network map in Oliver are not modified or changed to reflect the capabilities (i.e. hardware and software) of the Oliver performance monitor. (*See*, arguments at page 7 of the Response to Final Office Action dated December 22, 2008 (“FOA Response”). More importantly, Oliver’s paragraphs [0054]-[0055] - which were cited at page 2 of the Final Office Action - do not address the hardware or software that is loaded (i.e. “existing”) on a protocol tester, such as Oliver’s performance monitor. The cited paragraphs in the Oliver reference merely teach that the color of an object is changed based upon a user-selected performance metric. (*See, e.g.*, ¶ [0055]). Therefore, because Oliver does not determine what hardware or software exists on a protocol tester, Oliver cannot not teach or suggest modifying a visual network plan “according to which hardware and/or software exists in the protocol tester” as required in claim 1.

The Examiner appears to be equating the claim term “exists” with “selected” or “configured.” Oliver teaches that the colors of a display are changed based upon user-selected performance metrics; however, Oliver does not teach or suggest using the actual hardware or software existing (i.e. available) on the protocol tester to modify a network display or visual network plan.

Claim 1 further recites:

. . . **an interpreter** marks the elements for which a selection exists and/or which may be used for the configuration of the telecommunication measurement task **according to the hardware and/or software of the protocol tester.**

As Applicant pointed out at page 7 of the FOA Response, the Final Office Action did not address the “interpreter” element and did not identify a corresponding feature in the Oliver reference. Applicant further requested that the Examiner provide an explanation of where this “interpreter” feature could be found in the Oliver reference. The Advisory Action dated January 22, 2009 (“Advisory Action”) at page 2, identified Oliver’s paragraphs [0054] and [0055] as teaching this feature. As noted above, and in Applicants’ previous arguments (FOA Response at

7), these paragraphs fail to teach or suggest determining “the hardware and/or software of the protocol tester.” Moreover, the cited paragraphs do not teach or suggest using such information.

The Oliver system simply makes no modifications or adjustments to the network display based upon the hardware or software existing in a protocol tester. The only changes or modifications to the network display in the Oliver reference are color changes, which are made based upon a user-selected performance metric. Moreover, cited paragraphs [0054] and [0055] do not disclose software or other component that acts as the claimed “interpreter.” If the Examiner is alleging that the claimed “interpreter” is inherent in Oliver, then additional facts must be presented showing that such an “interpreter” would be necessarily present in the Oliver system. M.P.E.P. § 2112.

The above-identified elements of claim 1 are not taught or suggested by the Oliver reference. Therefore, claim 1 and its dependent claims are allowable over the Oliver publication.

Dependent Claims 20 and 21

The Final Office Action and Advisory Action failed to address the elements of claims 20 and 21. As Applicant noted at pages 7-8 of the FOA Response:

Claim 20 recites:

identifying one or more software application stored on the measurement device;

and claim 21 recites:

identifying one or more hardware components installed on the measurement device.

The Final Office Action does not point out where these features can be found in the Oliver publication, but instead points generally to paragraph [0025] to reject many of the dependent claims. (Final Office Action at 3.) Paragraph [0025] of Oliver does not teach or suggest identifying software applications or hardware components on the measurement device. Instead, paragraph [0025] merely identifies that an archival unit and a performance monitor may exist. These are not hardware or software components of a measurement device, but instead are separate network components. (*See*, Oliver Fig. 2, elements 205 and 215). Although this deficiency was identified in the FOA Response, it was not addressed in the Advisory Action.

The Oliver reference does not teach or suggest the limitations of claims 20 and 21. Therefore, claims 20 and 21 are allowable over the Oliver publication.

Summary

The Oliver reference fails to teach or suggest “modifying the visual network plan,” “an interpreter,” “identifying one or more software application,” or “identifying one or more hardware components.” Therefore, the pending claims are patentable over the Oliver application and the current rejections should be withdrawn.

In view of the above, Applicant respectfully requests allowance of the present application.

Respectfully submitted,

January 23, 2009
Date

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